UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SEQUOIA SCIENCES, INC.,	:	
	:	
Plaintiff,	:	No. 3:05 CV 1908 (MRK)
	:	
v.	:	
	:	
THOMAS K. WOOD	:	
	:	
Defendant.	:	

Ruling and Order

Currently pending before the Court is Defendant Thomas K. Wood's Motion to Dismiss and in the Alternative Motion to Transfer [doc. # 15]. For the reasons that follow, the Court DENIES Dr. Wood's Motion to Dismiss and his Motion to Transfer.

The Court assumes familiarity with the facts alleged. *See* Complaint [doc. # 1]. Mr. Wood asserts a number of grounds in support of his Motion. The Court will address them in turn.

First, Dr. Wood argues that Sequoia Sciences, Inc. ("Sequoia") lacks standing. The Court is not persuaded. The Supreme Court has held that the "irreducible constitutional minimum of standing" requires three elements:

> First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (alterations in original) (internal quotations and citations omitted). Here, the allegations of Sequoia's complaint easily plead each of

these elements. *See id.* at 561 ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice . . . ."). Thus, Sequoia alleges that in breach of his agreements and in violation of Sequoia's statutory and common law rights, Dr. Wood had disclosed information that Sequoia asserts is protected trade secret information, that Dr. Wood has threatened to make further disclosures of Sequoia's trade secret information, and that Sequoia has suffered and will continue to suffer injury as a result of the disclosures and threatened disclosures. Whether Sequoia will be able to prove its allegations is not an issue at the motion to dismiss stage. All that is required is that Sequoia adequately plead the elements of constitutional standing, and the Court has no doubt that Sequoia has done so. *See Lerman v. Board of Elections in City of New York*, 232 F.3d 135, 142 (2d Cir. 2000) ("Since this case remains at the pleading stage, all facts averred by the plaintiffs must be taken as true for purposes of the standing inquiry . . . .").

Second, Dr. Wood asserts that this Court lacks subject matter jurisdiction over Sequoia's monetary claims because they are barred by the doctrine of sovereign immunity. Dr. Wood's argument is as follows: He signed the agreements that are at issue in this case while a state employee (a faculty member at the University of Connecticut) and is alleged to have breached certain of those agreements while still employed by the State; accordingly, all of Sequoia's claims arising from breach of those agreements are asserted against Dr. Wood in his capacity as a state employee. Those claims are therefore barred by the State's sovereign immunity unless the State has waived such immunity. The State has not waived its sovereign immunity unless a plaintiff proceeds through the Claims Commission process set forth in Conn. Gen. Stat. § 4-165, and Sequoia has not alleged that it complied with the provisions of § 4-165.

As an initial matter, it is important to note that Sequoia's complaint seeks injunctive and

declaratory relief in addition to money damages, and therefore, this Court would have subject matter jurisdiction over Sequoia's claims for injunctive and declaratory relief even if the Court accepted Dr. Wood's argument. In any event, however, there are a number of logical and legal fallacies in Dr. Wood's argument that preclude the Court from accepting it. For one, Sequoia has alleged misconduct by Dr. Wood *after* he left the University of Connecticut, and there can be no claim that Dr. Wood's conduct since he has been at the University of Texas is shrouded with the sovereign immunity of the State of Connecticut. Therefore, under any circumstances, this Court would have subject matter jurisdiction over Sequoia's claims for monetary relief for conduct after Dr. Wood left the University of Connecticut.

The Court also cannot dismiss those claims that might give rise to damages for conduct that occurred while Dr. Wood was employed by the University of Connecticut. For Sequoia alleges that Dr. Wood entered into various agreements with the company in his individual capacity and also allege that he breached those contracts and violated various provisions of Connecticut law in an malicious manner that was outside the scope of his employment at the University of Connecticut. At this stage of the proceeding, this Court must accept Sequoia's well-pleaded allegations as true and give Sequoia the benefit of all reasonable inferences. Under that standard, it is clear that, if proved, those allegations would give rise to personal liability on the part of Dr. Wood that would not be barred by the doctrine of sovereign immunity. As the Connecticut Supreme Court held in *Miller v. Egan*, 265 Conn. 301 (2003), "§ 4-165 makes clear that the remedy available to plaintiffs who have suffered harm from the *negligent actions of a state employee who acted in the scope of his or her employment* must bring a claim against the state" pursuant to the claims commissioner process. *Id.* at 319 (emphasis added). But Sequoia is not alleging negligent conduct by Dr. Wood or conduct

within the scope of his employment. And *Miller* also makes clear that "[s]tate employees do not . . . have immunity for wanton, reckless or malicious actions, or for actions not performed within the scope of their employment. For those actions, they may be held personally liable, and a plaintiff who has been injured by such actions is free to bring an action against the individual employee." *Id*. That is precisely what Sequoia has done in this case.[1] While Dr. Wood urges this Court to decide on the basis of the Complaint that Dr. Wood's action were not wanton or malicious and were within the scope of his duties as an employee, the Court is satisfied that the allegations of Sequoia's complaint, which the Court must accept as true at this stage, are sufficient to withstand a motion to dismiss on immunity grounds. *See, e.g.*, *id.* at 307; *Martin v. Brady*, 261 Conn. 372, 376 (2002).

Third, Dr. Wood contends that the Court lacks personal jurisdiction over Dr. Wood under Connecticut's long-arm statutes and in any event, that it offend notions of due process to subject Dr. Wood to litigation in Connecticut. Once again, the Court is not persuaded. When a defendant moves to dismiss an action for lack of personal jurisdiction under Rule 12(b)(2) of the *Federal Rules of Civil Procedure*, the plaintiff has the burden of establishing that the court has jurisdiction over the defendant. *Chase v. Cohen*, No.3:04CV588, 2004 WL 3087557, at *3 (D. Conn. Dec. 29, 2004); *Haynes Const. Co. v. International Fidelity Ins. Co.*, No. 3:03CV1669, 2004 WL 1498119, at *2 (D.Conn. June 23, 2004); *see also In re Magnetic Audiotape Antitrust Litigation*, 334 F.3d 204, 206 (2d Cir.2003); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 566 (2d Cir.1996). Before discovery, a plaintiff may defeat a motion to dismiss by making a *prima facie* showing

[1] The Court notes that the State of Connecticut has not seen fit to enter an appearance on behalf of the Dr. Wood, nor assert the State's sovereign immunity on his behalf, even though Dr. Wood claims (without basis in the Court's view) that the "real party in interest" in this case is the State of Connecticut.

through affidavits and other evidence that the defendant's conduct was sufficient to warrant the exercise of personal jurisdiction. *See DiStefano v. Carozzi North Am., Inc.*, 286 F.3d 81, 85 (2d Cir. 2001); *see also Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir.1981); *Haynes*, 2004 WL 1498119, at *2.

Because discovery was not complete at the time the motion to dismiss was filed, Sequoia may defeat Dr. Wood's motion by making a *prima facie* showing of personal jurisdiction. Sequoia has done so. Even Dr. Wood acknowledges that there would be personal jurisdiction over him on Sequoia's breach of contract claims since he is alleged (not only in the complaint but in affidavits that accompanied Sequoia's motion for preliminary injunction) to have breached agreements with Sequoia that were made in Connecticut and that he breached while still in the State. *See* Conn. Gen. Stat. § 52-59b(a)(1) (conferring jurisdiction over a party who transacts any business within the state); *Chase*, 2004 WL 3087557, at *4-*5 (finding jurisdiction under § 52-59b(a)); *Haynes*, 2004 WL 1498119, at *2 (same). Moreover, Dr. Wood concedes that once the Court has personal jurisdiction over a defendant on one claim, the Court can also exercise jurisdiction over other, related claims that arise, as here, from the same nucleus of facts. In any event, the Court also concludes that Sequoia has alleged sufficient facts to support jurisdiction under Conn. Gen. Stat. § 52-59b(a)(2) (conferring jurisdiction over a party who commits a tortious act within the state).

Dr. Wood's due process arguments are equally unavailing. Dr. Wood negotiated the agreements at issue while he was in the State of Connecticut; those agreements were signed in Connecticut and called for performance within the State; he received Sequoia's alleged trade secrets while within Connecticut; he communicated with Sequoia from within the State; and he prepared posters and other documents that Sequoia claims improperly disclosed its trade secrets while he was

within Connecticut. In view of these undisputed facts, Dr. Wood cannot credibly argue that he lacked fair warning that his activities could subject him to suit in Connecticut. *See Chase*, 2004 WL 3087557, at *3; *Haynes*, 2004 WL 1498119, at *3. To the contrary, it is clear that Dr. Wood had far more than merely "minimal contacts" with Connecticut and that this Court's exercise of personal jurisdiction over him comports with traditional notions of fair play and substantial justice. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). That Dr. Wood has since moved to Texas does not deprive this Court of personal jurisdiction over him.

Fourth and finally, Dr. Wood argues that venue is improper in this Court and that even if venue is proper, this Court should exercise its discretion to transfer this action to the United States District Court for the Southern District of Texas. Under 28 U.S.C. § 1391(a)(2) venue in a diversity action is proper in any "judicial district where a substantial part of the events or omissions giving rise to the claim occurred." As is obvious from the foregoing discussion, Connecticut is a judicial district in which a substantial part of the events giving rise to this action occurred. Therefore, venue is proper in the District of Connecticut. *See Daniel v. American Bd. of Emergency Medicine*, 428 F.3d 408, 432 (2d Cir. 2005). In the Court's view, *Open Solutions Imaging Sys., Inc. v. Horn*, No. 3:03 CV 2077, 2004 WL 1683158 (D. Conn. 2004), on which Dr. Wood places principal reliance, is distinguishable on its facts from this case.

For similar reasons, the Court rejects Dr. Wood's invitation to transfer this action to his new home state. Courts ordinarily give strong weight to a plaintiff's choice of forum, which can be overcome only by clear and convincing evidence that other factors strongly favor trial in an alternative forum. *See, e.g.*, *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947); *Kodak Polychrome Graphics, LLC v. Southwest Precision Printers, Inc.*, No. 3:05CV330, 2005 WL 2491571, at *2

(D. Conn. Oct. 7, 2005); *Pitney Bowes, Inc. v. National Presort, Inc.*, 33 F. Supp.2d 130, 131 (D. Conn. 1998). There is no such countervailing evidence in this case. Many of the key events giving rise to this action occurred in Connecticut, the parties' agreements are governed by Connecticut law, Sequoia has asserted violations of several Connecticut statutes, and many of the likely witnesses are located in Connecticut. Considering all of the factors that bear on a decision to transfer a case under 28 U.S.C. § 1404(a), the Court declines to do so. *See Kodak Polychrome*, 2005 WL 2491571, at *2.

Accordingly, the Court DENIES Dr. Wood's Motion to Dismiss or Transfer [doc. # 15].

IT IS SO ORDERED,

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: **February 6, 2006**